

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 243 of 1996
with
Civil Application No.4535 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
(1) to (5) no.

PARSHOTTAMBHAI BABUBHAI PARMAR

Versus

BHAILALBHAI BABUBHAI PARMAR

Appearance:

Mr. P.B Majmudar for the appellants.
Mr.Jitendra M. Patel for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 29/08/96

ORAL JUDGEMENT

Mr.P.B.Majmudar, learned Advocate for the appellants, states that the application, Ex.58, has been filed by respondent No.1, who is the original plaintiff. He, therefore, seeks leave to delete the other respondents. Permission granted.

Admit. Mr. J.M.Patel, learned Advocate waives service on behalf of respondent No.1. At the request of the learned Advocates of the parties, this appeal is taken up for final hearing to-day.

The learned Second Joint Civil Judge (S.D.), Vadodara on 2-4-96 has passed an order below application, Ex.58, appointing Shri Pradeep Jani as the Court Commissioner/Receiver directing him to take the possession of plots Nos.8,11, 13 and 15 within 15 days from the date of the said order. A further direction is given to deposit Rs.3000/- towards the Court Receiver's remuneration and the Receiver has been given power on behalf of the Court to ask from the plaintiff-respondent any other legal expenses, if they are required to be born. The appellants have challenged the said order by way of this appeal.

It is the contention of the appellants from the very beginning that they are not in possession of plots Nos.8,11 and 13 and the same have been sold to the concerned persons in the year 1987. It is the further case of the appellants that plot No.15 is kept as owner's reservation and it is kept open till date. In view of the stand taken by the appellants, this Court directed the appellants to file an affidavit giving details about the present position of the plots in question.

Appellant No.1, Parshottambhai Babubhai Parmar, has filed an affidavit dated 1st July, 1996 giving details about the sale of plots Nos.8, 11 and 13. According to him, plot No.8 was sold on 17-2-87 to one Devesh Navinbhai Patel of Baroda.; plot No.11 was sold on 17-3-87 to one Indravadan Ratilal Parekh of Baroda, and plot No. 13 was sold on 23-2-87 to one Mayur Chandramukh Desai. He has further stated that, as of date, the above three plots are in possession of the transferees and they are kept open to sky and the transferees have covered the said plots by erecting compound wall. In so far as plot No.15 is concerned, it is the say of the deponent that it is in owner's reservation and, therefore, it has not been transferred to anybody and on this plot the co-owners have constructed small houses and are in actual possession of these small houses. At the instance of the respondent, the appellants have, in fact, produced a xerox copy of one sale deed and two index in this Court. In view of this, it is clear that plots Nos.8, 11 and 13 have already been transferred before the institution of the suit by way of sale deeds in favour of the transwferees and, therefore, the learned trial Judge was

obviously in error in appointing the Receiver to take possession of the said plots. It is always open to the respondent to join the transferees in the suit and to obtain appropriate orders against them from the trial Court.

In view of the above discussion, the appeal is allowed with no order as to costs. The impugned order below application, Ex.58, passed by the learned Second Joint Civil Judge (S.D.) ,Vadodara is set aside . However, in so far as plot No.15 is concerned, the parties are directed to maintain status-quo till the disposal of the suit.

Subject to the above, ad-interim relief granted in Civil Application No.4535 of 1996 is vacated and it stands disposed of accordingly.

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